



FH

**STATE OF WISCONSIN
Division of Hearings and Appeals**

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

CTO/159876

PRELIMINARY RECITALS

Pursuant to a petition filed August 15, 2014, under Wis. Stat. § 227.42, to review a decision by the Division of Health Care Access and Accountability alleging a caretaker supplement (CTS) overpayment, a hearing was held on September 11, 2014, at Elkhorn, Wisconsin.

The issue for determination is whether Petitioner was overpaid CTS because her children were not living with her.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

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Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: Melissa Sherry

Division of Health Care Access and Accountability
Madison, WI

ADMINISTRATIVE LAW JUDGE:

David D. Fleming
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a resident of Walworth County. She was a recipient of caretaker supplement (CTS) benefits at all times relevant here.
2. Petitioner was sent a notice dated July 22, 2014 that informed her that she had been overissued caretaker supplement benefits in the amount of \$800.00 for the months of March and April 2014.

3. The reason for the overissuance alleged here is that Petitioner's 2 children were placed out of the home in February 2014 by Court order. They were allowed return by the Court in June 2014.

DISCUSSION

On January 1, 1998, Wisconsin Works (W-2) ended AFDC in Wisconsin. W-2 is a work program, but Supplemental Security Income (SSI) recipients by definition are unable to work, so SSI recipients cannot qualify for W-2. In order to aid those on SSI with the financial burden of raising children, the state, acting under Wis. Stat. § 49.775, implemented the Caretaker Supplement program. It pays \$250 per month for one child and \$150 per month for each additional child to parents who receive SSI. The Caretaker payments are included in the SSI State Supplement payments made to eligible recipients. To be eligible, the caretaker must, among other things, be an SSI "recipient."

The Department may recover incorrectly paid Caretaker Supplement payments. *Wis. Admin. Code, § DHS 2.04; see also Wis. Stat., §49.775.* " 'Incorrectly paid benefits' means payments of any amounts disbursed to a person who was not eligible for any benefit during the period for which the benefit was paid." *Wis. Admin. Code, § DHS 2.03(5).*

Also relevant here are the following provisions from the State *SSI Caretaker Supplement (CTS) Handbook*:

3.1.8 Temporary Absence

Unlike some other programs of public assistance, CTS does not allow eligibility in cases where parents or children are temporarily absent from the home.

3.1.9 Household Relationship

Household relationships are a key component of CTS eligibility. SSI parents must be caring for their own children, by birth or adoption, in order to qualify for CTS. This means that the parent resides with the child and provides the majority of physical care and financial support and functions in the parental role. When two SSI parents live with their children in common, only one of these parents may be identified as the parent who is caring for their children. When a SSI recipient is a minor parent who resides with his or her child and there are adults in the household, the minor parent must be the person caring for the child, not the adults in the household.

Here Petitioner's children were removed from Petitioner's home in February 2014 and placed with her mother. Petitioner's mother lives next door to Petitioner. The children were allowed very liberal visitation and overnight visits with Petitioner. Thus Petitioner argues that the children were never really placed out of her home, that the change in placement was essentially a technicality and she should have remained eligible for the CTS benefit.

I am sustaining this overpayment. Petitioner's children were placed out of her home. Though there was liberal visitation this does not change that fact. There is no basis for continuing the CTS benefit during that out of home placement.

CONCLUSIONS OF LAW

That Petitioner was overissued CTS benefits for March and April 2014 as her children were placed out of her home by Court order during those two months.

THEREFORE, it is

ORDERED

That this appeal is dismissed.

REQUEST FOR A REHEARING

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

APPEAL TO COURT

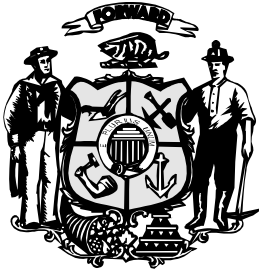
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson Street, Room 651, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,
Wisconsin, this 21st day of November, 2014

\sDavid D. Fleming
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on November 21, 2014.

Division of Health Care Access and Accountability
State SSI